

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

Cr. Appeal No. 112 of 1993.

Date of Decision: November 1,, 2007.

State of H. P.

Appellant.

Versus

Amar Singh & others

Respondents.

Coram

Hon'ble Mr. Justice Surjit Singh, J.

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting¹? Yes.

**For the appellant : Mr. S.D. Vasudeva, Addl. Advocate General with
Mr. D.S. Nainta, Dy. Advocate General.**

For the respondent : Mr. Rakesh Jaswal, Advocate.

Surjit Singh, J. (Oral)

This appeal by the State is directed against the judgment of the Sessions Court, whereby the respondents Amar Singh, Ravi Kumar and Braham Chand, who were charged with and tried for an offence punishable under Section 302 read with Section 34, Indian Penal Code, have been acquitted.

The allegations that were made against the respondents, in the report under Section 173 Cr.P.C. may be summed up thus: Deceased Suresh Kumar son of Parmod Singh (PW5) after taking his meals in the night of 19.9.1990 went to a room of his house along with Vivek Kumar (PW4) one of his first cousins as he and PW4 Vivek Kumar were supposed to sleep in that room. They were yet to go to sleep, when one Satish Kumar who was co-accused with the respondents, but on account of his being a child was sent to the Children Court, shouted the name of

¹ Whether reporters of the Local papers are allowed to see the judgment?

deceased from out side his house and called him out. The deceased then left the room. He did not return for the night. Next morning, his dead body was found in the cow shed of one Bhavlesh Kumari in village Marrera falling within the jurisdiction of Police Station Lambagaon. Report was lodged with the Police by one Ravinder Singh, which was entered in the register of F.I.R. Copy of the said report is Exhibit PB. A.S.I. Kashmir Singh (PW15) then went to the spot. He conducted inquest. Several injuries, including some cut injuries, on the back side of the head just above the neck were noticed. One note, purporting to have been addressed by the deceased to his mother, was also found lying near the dead body. As per the contents of this note, the deceased had committed suicide, because of his having been given to bad habits like smoking and illicit relations with a few girls of the village. Post mortem examination of the dead body was conducted by Dr. D.S. Chandel (PW1), who noticed incised wounds on the occipital region of skull, left parietal region, over the eyes, right mandible area, below the right ear and left iliac-crest parallel to iliac-crest. It was opined that the cause of death was hemorrhage shock, due to bleeding from the multiple wounds. During the course of the investigation, Satish Kumar, the juvenile offender told the Police that the deceased had been murdered by three persons, named, Suman Kumar, Sudesh Kumar and Balbir Singh. The Police took these three persons into custody. They remained in the custody of the Police for quite some time and were ultimately got discharged by the Police, under the orders of the concerned Judicial Magistrate, as no evidence was found against them.

It appears that on 27-9-1990 Suman Kumar one of the three arrested suspects told the Police that not he and other two arrested persons but the present respondents were involved in the commission of the crime. Police then arrested them. They were interrogated. In the

course of their interrogation, they made disclosure statements, leading to the discovery of an axe, a knife and a toka (Chopper). Blood stains were found on all these three alleged weapons but the origin of the blood, that is to say whether it was human blood or blood of some animal could not be ascertained.

Investigation of the case revealed that alleged suicide note Exhibit P10, which was recovered from the spot by A.S.I. Kashmir Singh (PW15) at the time of conducting of inquest, had been written by the above named delinquent Satish Kumar on a leaf removed from one of the note books of Surjit Singh son of respondent Braham Dass. That note book was taken into possession. The alleged suicide note along with the said note book was sent to the Expert, who opined that the paper on which the suicide note was written had been part of the aforesaid note book. Specimen writings of Satish Kumar delinquent were also taken and the alleged suicide note was sent to the Handwriting Expert for comparison of the writing thereon with the specimen writing of delinquent Satish Kumar. The Expert gave the opinion that the two writings were in the hand of the same person. It was also found during the course of investigation that there had been a dispute with respect to a piece of land between the father of the deceased and respondent Amar Singh. Delinquent Satish Kumar had been seen in the company of the deceased and his cousin Vivek Kumar (PW4) in the evening of 19.9.1990 by the mother of the deceased namely Satya Devi (PW3). Police also recovered an inland letter Exhibit P9 which the respondent Ravi Kumar allegedly addressed to his parents from the judicial lock up on 16.10.1990 wherein it is stated that he himself was not involved but the other two respondents were involved in the crime. It has not been elaborated as to in what matter he himself was not involved but the other two respondents were involved. During the course of the trial, besides

leading evidence with respect to the aforesaid circumstances, the prosecution examined one Ramesh Chand (PW17), who testified that on the night of 19.9.1990, around 9.30 p.m., he had seen all the three respondents and delinquent Satish Kumar in the company of the deceased in village path which connects the cattle shed with his house.

The trial Court did not believe the evidence of the prosecution and acquitted the respondents vide judgment under appeal.

We have heard the learned Additional Advocate General and gone through the record.

None of the circumstances, on which the prosecution sought the conviction of the respondents stands established. The evidence led by the prosecution suggests that the evidence with respect to all the alleged circumstances is concocted.

The first circumstance, which the prosecution sought to prove, was that Satish Kumar delinquent called the deceased and the deceased accompanied him on the fateful night on such call. Vivek Kumar (PW4), a cousin of the deceased, hailing from a different village, who happened to be at the house of the parents of the deceased on that night, has stated that it was Satish Kumar who had called out the deceased and that he identified him by his voice. He does not say that he had seen Satish Kumar. It is the own case of the prosecution that Vivek Kumar (PW4) is not the resident of village of the deceased. He was in the house of the deceased that night only as a guest. Vivek Kumar does not claim that he knew the delinquent Satish Kumar from before. Thus he was not in a position to identify him he earlier having not seen him or heard him talking to some one. Therefore his testimony that he identified Satish Kumar by his voice cannot be believed. In any case, the circumstance in no way connects the present respondents with the commission of the crime.

The next circumstance is about the alleged motive. Satya Devi (PW5), mother of the deceased, had stated that respondent Amar Singh had been cultivating their land on daily wage basis and when he was made to vacate the land, he did not take it in good taste. Even if the statement of this witness is assumed to be true and correct, that cannot be said to be a motive for killing of the deceased. It is a matter of common knowledge that even the tenants and the licensees do not easily vacate the leased or licensed property but the feelings of the tenants or the licensees are not so bitter that they would take the life of the lessor or the grantor of the license or a member of their families.

The next circumstance is that respondent Ravi Kumar wrote a letter Exhibit P9, while lodged in the judicial lock up, and in the said letter he stated that not he but the other two respondents were involved. The letter does not state that the other two respondents were involved in the murder of Suresh Kumar and supposedly even if the mention in the letter were that the other two respondents were involved in this crime, still the same could not have been used as a circumstance against the other two respondents nor could it have been used against respondent Ravi Kumar himself as he has exculpated himself. It does not contain any confession or admission by him.

Exhibit P10 is the writing, allegedly forged by delinquent Satish Kumar in the name of the deceased which is in the nature of a suicide note. Handwriting expert has given the opinion, vide report Exhibit P4/2 that the writing of this note Exhibit P10 tallies with the writings marked Na-I to Na-4, the specimen writings of the delinquent Satish Kumar. The alleged specimen writings Na-1 to Na-4 of delinquent Satish Kumar have not been proved and, therefore, the opinion Ext. P4/2 is of no evidentiary value. Moreover, as per this opinion, the note is in the hand of delinquent Satish Kumar. No doubt the note is alleged to be written on a leaf

removed from a note book of a son of respondent Braham Chand but then this fact has not been proved that the note book was made available to Satish Kumar by Braham Chand or that Braham Chand or for that matter any other respondent had any roll to pay in the forgery of the suicide note Exhibit P10.

It is also doubtful if this note was recovered from the spot by A.S.I. Kashmir Singh (PW15) at the time when he visited the spot and conducted the inquest. Four photographs were taken on the spot. The letter does not appear in any of the aforesaid four photographs which are Exhibit P14 to P17. When confronted with this fact, A.S.I. Kashmir Singh (PW15) stated that the note was lying under the dead body and it was found only when the dead body was lifted for being taken out of the cattle shed. This statement is apparently untrue, because it is contrary to what is recorded in the seizure memo Ext. PG whereby this letter was seized. As per the contents of Exhibit PG, the letter was found lying torn near the dead body and not underneath it.

The evidence of the prosecution with respect to alleged disclosure statement made by the three respondents and the recovery of alleged weapon of offence pursuant to those statements is also doubtful. The only independent witness examined by the prosecution to prove the alleged disclosure statements of the respondents is PW8 Tek Chand. He cannot be said to be an independent witness because as per his own statement, he supplies ration to the Police in bulk on credit basis. According to the testimony of this witness, all the three respondents are alleged to have made the disclosure statements one after the other in just one hour from 9.00 a.m to 10.00 a.m. The respondents had been taken into custody by the Police on 28.9.1990. Their interrogation must have started soon after their arrest. They did not make any disclosure statement until 30.9.1990 but then all of them made such statements

just in one hour in the presence of Tek Chand (PW8). This is not believable.

Further more, recovery of the weapons was allegedly effected in the presence of Bhawani Singh (PW7). The witness has no doubt stated that Amar Singh respondent produced an axe from the creepers in the kitchen garden of his house and Ravi Kumar produced a knife from behind a portrait of a goddess and the Police took out the 'toka' from the house of third respondent Braham Chand, but considering the fact that the police has done a lot of padding in the case as also the fact that the evidence regarding the disclosure statements of the three respondents is doubtful, much reliance cannot be placed on his testimony. If the Police could have planted the suicide note Exhibit P10 where is the guarantee that the weapons were not planted. In fact, we find from the record some material suggesting that the weapons were planted upon the respondents. On 26.9.1990 when the respondents had not even been arrested and no body had expressed any suspicion against them, the Police in an application made to the concerned Magistrate for seeking further remand of the three persons, who were initially arrested, stated that those persons were required to be remanded in Police custody, for a further period of seven days as they had yet not disclosed as to where they had kept the weapons of offence, i.e, the knife and the axe used in the commission of the crime. It remains a mystery how did the Police know on 26.9.1990 that the weapons of offence, included a knife and an axe. Moreover, the weapons do not stand connected with the commission of the crime. The Chemical Examiner has not stated that there were stains of human blood on any of the weapons, though he does say that stains of blood were there. The Doctor, who conducted the post mortem examination, has also not given definite opinion that the injuries could have been caused by means of these weapons, because

when asked in the examination-in-chief itself as to which weapon could have caused which of the injuries noticed by him on the dead body, he stated that he was not in a position to answer the question meaning thereby that he could not say which particular injury or injuries could have been caused by which particular weapon.

The prosecution sought to prove by examining a witness, namely, Ramesh Chand (PW17) that the deceased and the respondents were seen together at 9.30 p.m. on a village path on the fateful night. The witness was not examined by the Police, during the investigation of the case. He admitted in the cross-examination that he had been on the spot on 20.9.1990 when the dead body was seen and the Police visited the spot but he did not disclose to any body that he had seen the deceased in the company of the respondents on the previous night. It was only in June, 1991 that he went to the Police Station of his own and that too after report under Section 173 of the Code of Criminal Procedure had already been filed in the court of Judicial Magistrate and the said Magistrate had taken cognizance of the case. Even though Mohinder Singh (PW18) Sub Inspector stated that he had recorded the statement of this witness on June 20, 1991, at the same time he stated that the said statement had not been submitted to the Court and he offered no explanation for with-holding the same.

In view of the above said position, we see no merit in the present appeal. The same is therefore dismissed.

(Surjit Singh), J.

(Surinder Singh), J.

November 1, 2007.
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